



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,012	10/26/2001	Carlos M. Collazo	020897-000130US	8807

20350 7590 10/20/2005

TOWNSEND AND TOWNSEND AND CREW, LLP  
TWO EMBARCADERO CENTER  
EIGHTH FLOOR  
SAN FRANCISCO, CA 94111-3834

EXAMINER

BENGZON, GREG C

ART UNIT PAPER NUMBER

2144

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/040,012</p>	<p>Applicant(s)</p> <p align="center">COLLAZO, CARLOS M.</p>	
	<p>Examiner</p> <p align="center">Greg Bengzon</p>	<p>Art Unit</p> <p align="center">2144</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This application has been examined. Claims 4-5 are pending.

#### ***Priority***

This application claims benefits of priority from US Provisional application 60243783, filed October 26, 2000.

The effective date of the subject matter in the claims in this application is October 26, 2000.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hafez et al. (US Patent 6513065), hereinafter referred to as Hafez , in view of Strandberg et al. (US Patent 6647412), hereinafter referred to as Strandberg .

Hafez disclosed (re. Claim 4) a method for assessing server and network of servers capacity, (Hafez – Column 9 Lines 65) summarized through two integer values

Art Unit: 2144

representing Local Node Value (LNV) and Composite Node Value (CNV), (Hafez – Column 12 Lines 5-15, Column 15 Lines 45-50) respectively, the method comprising: calculating the LNV of a server as an integer value through a combination of measured counters at the same point in time (Hafez - Column 12 Lines 45-50), the LNV reflecting the capacity of the server to receive work loads;

Hafez does not disclose a method for collecting information about a network's operation comprising using peer-to-peer communication among a plurality of devices in the network to obtain a measure of the network performance. While Hafez disclosed a method for calculating a combination and summarization of node values (Hafez - Figure 8a-8b, Column 12 Lines 60-65), Hafez did not disclose (re. Claim 4) calculating the CNV of a beginning server as an integer value through a combination of the LNVs of a subnetwork of servers that begins with the beginning server, the calculation of the CNV including the LNV of the beginning server, the CNV reflecting the capacity of the sub-network beginning with the beginning server to collectively receive workloads.

Strandberg disclosed (re. Claim 4) a method for propagating node information through ingress, core, and egress nodes using peer-to-peer communication in a differential network, (Strandberg- Figure 3, Column 1 Lines 55-65, Column 2 Lines 1-10) said node information containing performance parameters such as packet loss, delay rate, queue load, service rate and stability. (Strandberg - Figure 3, Column 3 Lines 1-5). Strandberg disclosed (re. Claim 4) calculating the CNV of a beginning server as an integer value through a combination of the LNVs (Strandberg - Figure 3,

Art Unit: 2144

Column 3 Lines 1-5) of a subnetwork of servers that begins with the beginning server, the calculation of the CNV including the LNV of the beginning server, the CNV reflecting the capacity of the sub-network beginning with the beginning server to collectively receive workloads. (Strandberg – Column 6 Lines 60-65)

Hafez and Strandberg are analogous art because they present concepts and practices regarding the capture and assessment of network performance measurements. (See Strandberg Column 4 Lines 1-5, Column 6 Lines 10-65) At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings regarding peer-to-peer communications by Strandberg into the method of Hafez, such that the data collection components (i.e. agents) are able to exchange information with each other (i.e. other agents) and not just the central monitoring system (i.e. console). The suggested motivation for doing so would be, as Hafez suggests (Hafez - Abstract), so that performance data may be summarized on several levels, where each summarization level is coarser in granularity than the previous level. It would have been obvious to a person of ordinary skill in the art that the data captured by Strandberg on a per-hop basis, not just on an endpoint-to-endpoint basis, would provide an increased level of granularity that Hafez strives to obtain. Furthermore, since Hafez is presenting a network monitoring system that strives to predict network performance for hypothetical scenarios, it would have been obvious to

Art Unit: 2144

combine Strandberg in order to allow the status information to be available at the ingress node before the traffic enters the network, thereby enhancing the response capabilities to dynamic network conditions (Strandberg - Column 1 Lines 50-55, Column 9 Lines 1-10)

Hafez disclosed (re. Claim 5) further comprising obtaining a plurality of characteristics or counters at a specific point in time (Hafez – Column 12 Lines 45-50) that are combined (Hafez - Figure 8a-8b, Column 12 Lines 60-65) through correlation matrixes and weighted sums (Hafez – Column 11 Lines 15-20) to produce the two integer values for the same point of time, the correlation matrixes and weighted sums being updated over a period of time to reflect historical changes over the period of time.(Hafez – Column 11 Lines 65)

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 2144

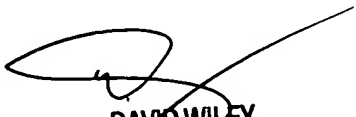
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcb



DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100